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August 7, 2003

Via Electronic Filing

Marlene R. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: ***Ex Parte***, CC Docket Nos. 99-68, 01-92

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, this will provide notice that on August 6, 2003, John Sumpter, Vice President – Regulatory, Pac-West Telecomm, Inc., Patrick J. Donovan, and the undersigned met with: (1) Christopher Libertelli, Office of Chairman Powell; and (2) Tamara Preiss, Victoria Schlesinger, Kathy O'Neill, Alvaro Gonzalez, and Chris Barnekov of the Wireline Competition Bureau. We presented the views set forth in the attached document, which was provided at the meetings.

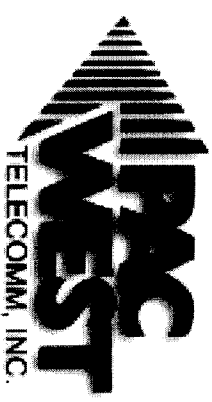
Sincerely,



Michael W. Fleming



# Intercarrier Compensation Issues





# Intercarrier Compensation Summary

- *ISP Remand Order* -- SBC's Two-Year Delay to Address a "Pressing Problem"
- CLEC Foreign Exchange Service (Virtual NXX) - Direct Substitute for Verizon Foreign Exchange Products
- Cost-Based Intercarrier Compensation for All Traffic Continues to be Appropriate



# SBC's Untimely Adoption of ISP Remand Order

- The “Pressing Problem” That Never Existed
  - *ISP Remand Order* ostensibly addressed “a need for immediate action with respect to ISP-bound traffic” by “seeking to remedy an exigent market problem” and to “curtail a pressing problem.”
  - According to SBC: “massive subsidies” (1/13/2000); “dysfunctional,” “payments continue to skyrocket,” “grossly inequitable” (11/3/2000)





# **SBC's Untimely Adoption of ISP Remand Order**

- The “Pressing Problem” That Never Existed
  - SBC Did Not Attempt to Adopt the FCC Intercarrier Compensation Regime for Over 2 Years
  - SBC Has Chosen to Pay Contract Rates for “ISP-Bound Traffic” for More than Two Years
  - SBC’s Payments to Pac-West Have Remained Flat Without Adopting the FCC Plan, Even With Steady Growth in Pac-West Traffic





# SBC's Untimely Adoption of ISP Remand Order

- SBC's Conduct Proves There was NEVER a "Pressing Problem" that Warranted the Radical Action Imposed by the *ISP Remand Order*





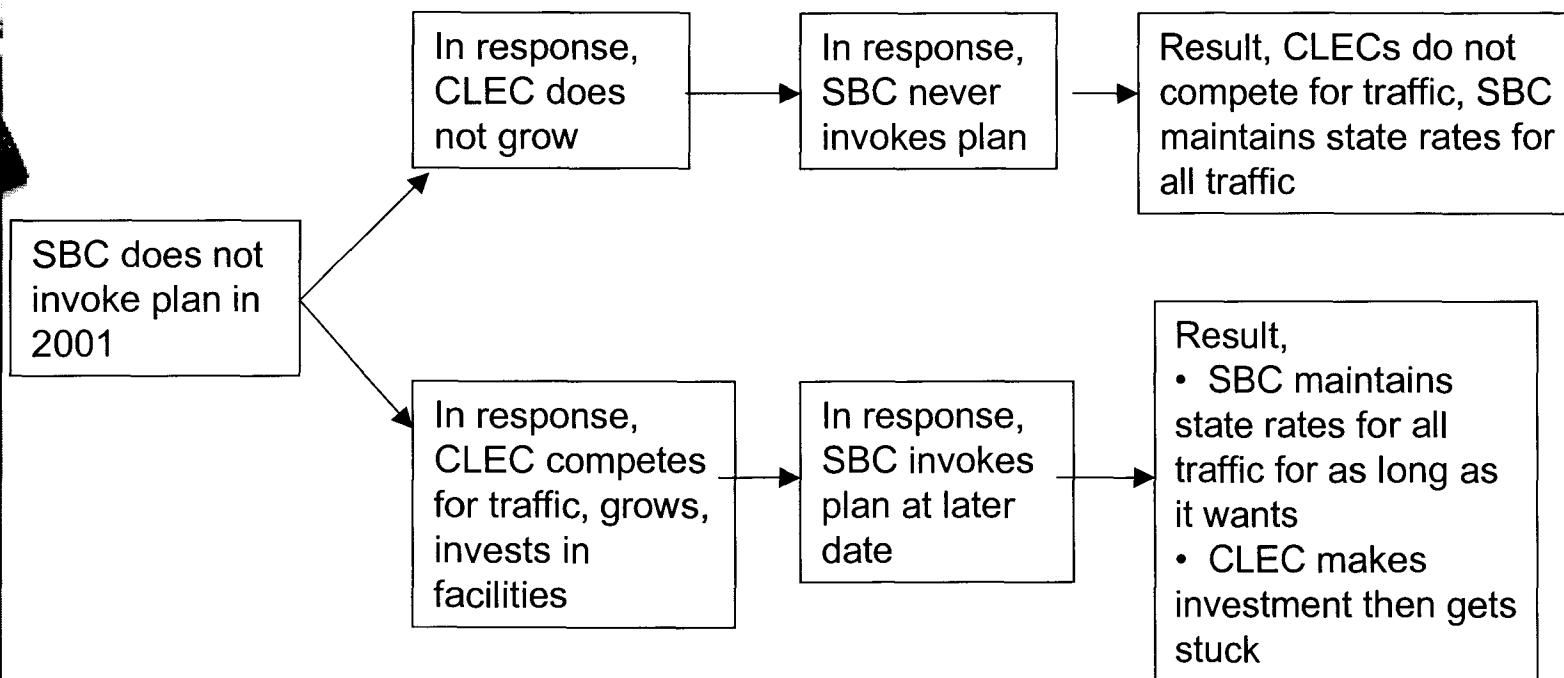
# **SBC's Untimely Adoption of ISP Remand Order**

- If ILEC Had Elected FCC Plan in 2001, as expected:
  - CLEC knows what its compensable traffic will be in subsequent years
  - RBOC is faced with the same rates for its traffic, rates are reciprocal
  - CLECs will moderate their competitive efforts to avoid exceeding the Cap



# SBC's Untimely Adoption of ISP Remand Order

- If ILEC is allowed to impose plan after 2001:





# SBC's Untimely Adoption of ISP Remand Order

- SBC No Longer Has Option to Adopt Remedial Scheme
  - “Pressing Problem” Never Existed, Therefore Remedy Never Needed
  - SBC Made Choice Not to Invoke FCC Plan, and Pac-West Reasonably Relied Upon SBC Decision
  - Prevent SBC from Gaming the Process





# **SBC's Untimely Adoption of ISP Remand Order**

- Commission Should:
  - Grant Core Communications Petition for Forbearance from Enforcement of ISP Remand Order
  - Grant Pac-West Petition for Declaratory Ruling that SBC May Not Invoke FCC Compensation Regime
  - Act on Remand from D.C. Circuit



# CLEC Foreign Exchange

- Verizon Ex Parte Filing Demonizes CLEC Foreign Exchange Service (Virtual NXX)
  - CLEC Product is a Competitive Response to Numerous ILEC ISP Hubbing Products (IPRS, OmniPoint, etc.)
  - Is a Natural Result of Centralized Switching
  - Real Problem for Verizon is the Competitive In-Roads by CLECs Such as Pac-West

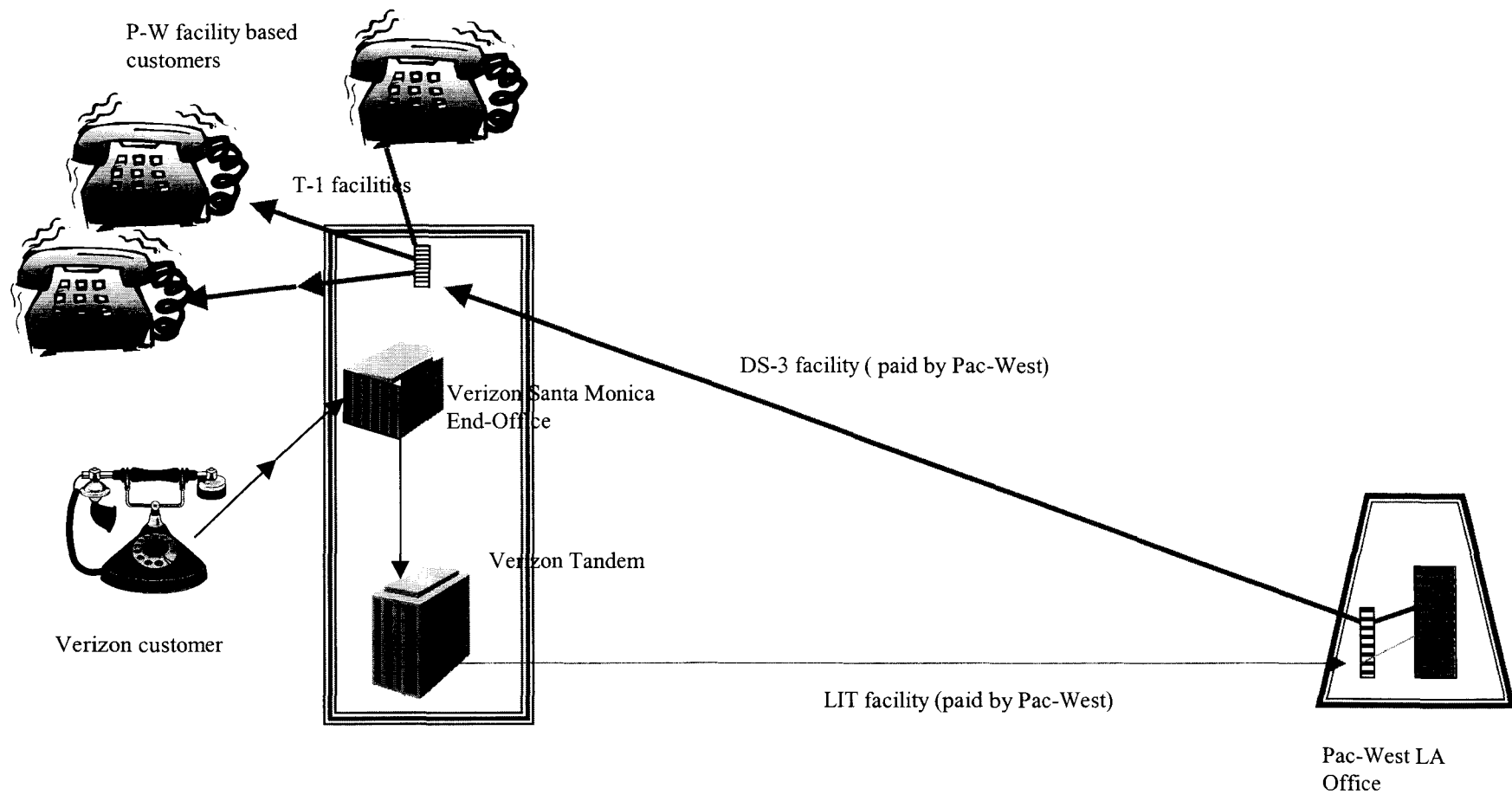


### Verizon Rate Centers

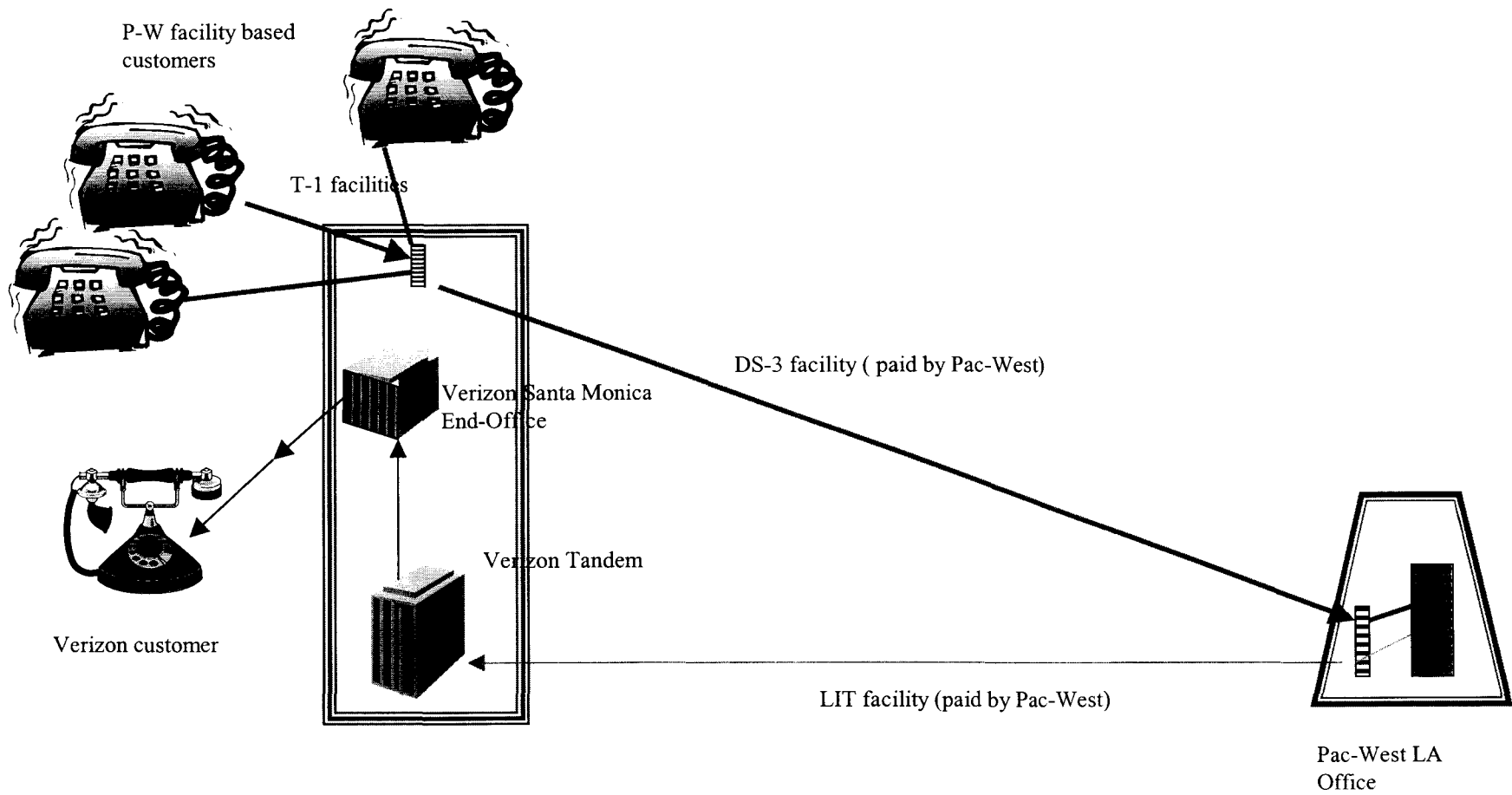
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- Legend:
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  - Subtends to COVNCAXF01T
  - Subtends to ONTRCAXP01T
  - Subtends to SNMNCAXP01T
  - Subtends to VTVLCAXA79T
- Map labels:
- COVNCAXF01T
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  - SNMNCAXP43T
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  - ONTRCAXP01T

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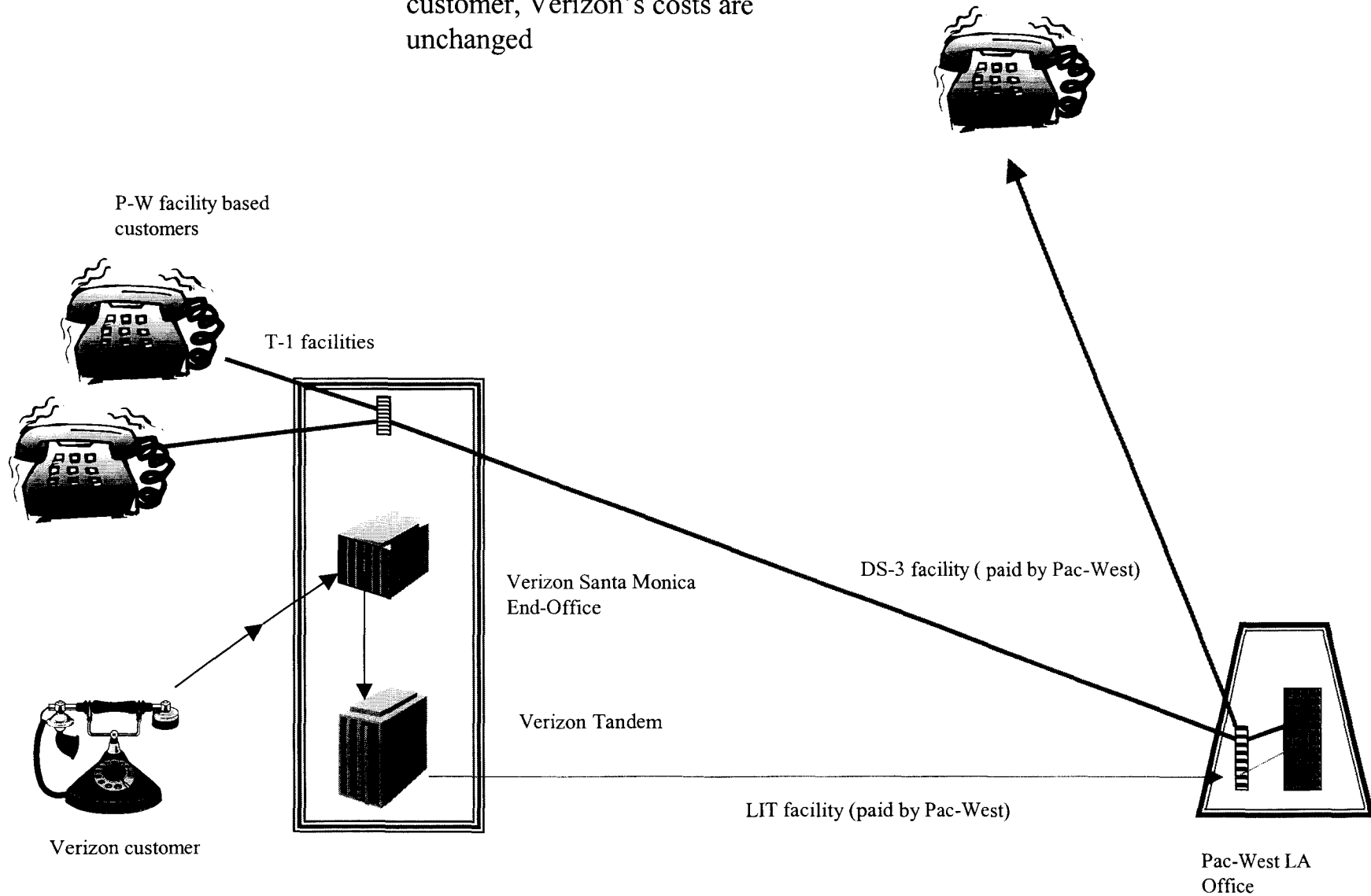
A Verizon customer makes a call to a neighbor served by Pac-West



A Pac-West customer makes a call to a neighbor served by Verizon



Regardless of location of Pac-West customer, Verizon's costs are unchanged





# CLEC Foreign Exchange

- ILEC Position Is Self-Contradictory
  - Vast Majority of CLEC Foreign Exchange Traffic is ISP-Bound
  - ILECs Demand That Calls to ISPs *Terminate* Within Same Local Calling Area
  - Yet ILECs Have Never Agreed that ISP-Bound Traffic *Terminates* Within Same Local Calling Area as Calling Party







# Intercarrier Compensation

- Terminating Switching is a Functionality Provided by a Terminating Carrier for Which It Should Be Compensated
  - A single cost-based rate should apply to all traffic
    - 251(b)(5)
      - Intrastate (local)
      - Interstate (“presumed” ISP)
    - 251(g)
      - IntraLATA
      - InterLATA

# Conclusion

- The “Pressing Problem” Never Existed, So SBC May Not Now Adopt FCC Plan
- Verizon Position is Self-Contradictory -- Either the Location of the Modem for ISP-Bound Traffic Matters, or It Doesn't
- Unified Inter-carrier Compensation Requires Cost-Based Rates for all Traffic

